

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

MID-ARCTIC TRANSPORTATION
COMPANY LTD.

Transcript of the Oral Reasons for Judgment and Remarks
on Sentence delivered by His Honour Chief Judge J. R.
Slaven, sitting at Yellowknife, in the Northwest
Territories, on Thursday, January 17, A.D. 1985

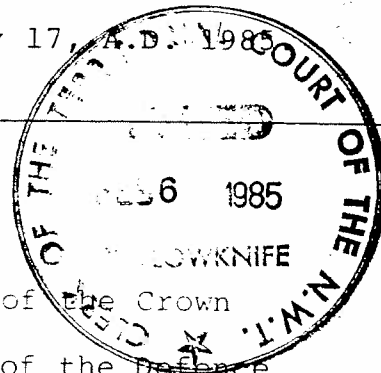
APPEARANCES:

MS. L. WALL

On behalf of the Crown

MR. A. WRIGHT

On behalf of the Defence



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1 THE COURT: We have here an accused company, which clearly had
2 operating authority to transport goods into the Northwest
3 Territories, and within the Northwest Territories. Included
4 in its operating authority was a category referred to in
5 Schedule C of the Public Service Vehicles Regulation
6 number 228, as (G) General Merchandise. They did not have
7 authority for (P) Petroleum Products. I am asked to find
8 that barite, which was being brought in for use in drilling
9 mud compounds, falls within (G).

10 Now, looking at the dozen or so categories in
11 Schedule C, I think there is something very significant:
12 (B) Bus Service, specifies certain things, and then 'other
13 services of a similar nature'; (C) Construction Materials,
14 it lists a bunch of them, and 'items of a similar nature';
15 (H) Household Goods, certain specific items, and 'items of
16 a similar nature'; and then on into several other categories.
17 And all of these are referred to by specific items, and
18 'items of a similar nature.' I think it is significant,
19 however, in (G), under General Merchandise, it specifies
20 'food stuffs, liquor, livestock, hides, paper products,
21 rubber products; and then it doesn't say 'similar nature,'
22 it says, 'other items of a general nature which cannot clearly
23 be included in one of the other categories.' So, it seems
24 to me that under (G) General Merchandise, we're
25 not into a sui generis situation, as we would be in any
26 other of these categories. All the others say 'items of a
27 similar nature,' so it would be a similar genus. Under

1 general merchandise, it's the only one of the dozen or so
2 categories that refers to 'items of a general nature' rather
3 than 'items of a similar nature.' But, they must be of a
4 general nature which cannot clearly be included in one of
5 the other categories.

6 Now, it seems to me that barite could easily be
7 included under (R) Rock, and possibly it is. If you have an
8 (R) authority, you could likely bring barite in under that.
9 Under (P) Petroleum, and it's headed that--and to me the heading
10 petroleum products does not limit what can be put in that
11 paragraph, it's like a marginal note, and it's for conven-
12 ience of finding things in statutes and regulations, and also
13 does go on to specifically mention chemicals, many of which
14 would not be petroleum products. Then it says 'drilling
15 mud (excluding bag cement), and items of a similar nature.'
16 Now, according to the testimony of Mr. Hladun, the barite was being
17 brought up to be used in drilling mud, as it is sometimes
18 called. It is extensively used in the Beaufort Sea in
19 drilling mud.

20 I agree with Mr. Wright that the persons drafting
21 the regulations could have easily mentioned 'drilling mud
22 and components thereof'; and that would make it clear.
23 However, I really find that drilling mud could easily
24 be included in one of the other categories. If the accused
25 had an operating authority for (P) Petroleum Products, or
26 (R) Rock, and was charged, I think I would find that barite
27 would fall in either one or both of those categories.

1 I cannot find that it can fall within general merchandise.
2 I think if general merchandise referred to 'items of a
3 similar nature', that making it somewhat narrower, but to me
4 barite falls within drilling mud as a component or rock as
5 gravel, earth, sand, items of a similar nature; but I find
6 that barite does not fall within general merchandise.

7 I find Mid-Arctic Transportation Company Ltd., accordingly,
8 on the twenty-fourth of July, 1984, was not a holder of
9 a certificate entitling it to transport barite into the
10 Northwest Territories, or within the Northwest Territories,
11 and I find them guilty as charged.

12 (SUBMISSIONS ON SENTENCE ON BEHALF OF THE CROWN BY MS. WALL)

13 (SUBMISSIONS ON SENTENCE ON BEHALF OF THE DEFENCE BY
14 MR. WRIGHT.)

15 THE COURT: Well, I don't have much of a scale to operate in,
16 one to five hundred dollars. Either they took a calculated risk or it was
17 a real misunderstanding by somebody in the office when they
18 contracted to haul this barite without a (P) licence. It
19 wasn't a small amount, quite a number of truck loads, as I
20 would take it. But, it wasn't a case of some fly-by-night
21 operator trying to sneak over the border after midnight and
22 and get out before someone saw them.

23 As I say, they've been operating for over twenty-
24 five years and have no previous convictions for matters of
25 this kind. I think that should weigh rather heavily.

26 I convict the accused company and direct they pay
27 a fine of one hundred and fifty dollars. I'll give them
three months in which to pay the fine.

(AT WHICH TIME THIS MATTER WAS CONCLUDED.)

Certified a correct transcript

Edna Thiessen
Edna Thiessen, Court Reporter

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